

MONTANA LEGISLATIVE HISTORY

Chapter 195 19 85

Bill H 852 S _____ Original bill & history C

H. Committee on Business & Labor

Hearing Date(s) Feb 21 ☒ C

Feb 22 ☒ C

_____ C

_____ C

Date Out Feb 22 ☒ C

S. Committee on Business & Industry

Hearing Date(s) Mar 14 ☒ C

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Mar 14 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

A fine of up to \$100 may be imposed for failure to do so. Representative Hanson suggested an amendment be considered that would increase the fine to \$250.

Proponent Senator Ed Smith, Director, Northeast Land and Mineral Association, explained this will help to clear title on oil leases. The releasing provision will work the same as on mortgages.

In closing, Representative Hanson added this will help to clean up the county records.

There being no further discussion by proponents and no opponents to the bill, all were excused by the chairman and the hearing on House Bill 840 was closed.

HOUSE BILL 852: Hearing commenced on House Bill 852. Representative John Harp, District #7, sponsor of the bill, explained this bill revises the definition of "public utility" to provide that the Public Service Commission may decide the definition does not include a person who owns equipment that is leased to a public utility. This will work as a financing tool to expedite the potential sale of Colstrip 4 and work in the purchaser's interest. The position of the Montana Power Company will benefit along with the Colstrip 4 issue. Representative Harp voiced his opposition to any additional language that may be proposed.

Proponent Bob Gannon, Vice President, Montana Power Company, distributed to committee members proposed amendments which are attached hereto as Exhibit 7. House Bill 852 is a means to address the situation of Colstrip 4 and the financing situation. Colstrip 4 must be disposed of and a "leverage lease program" will be considered. A purchaser will buy the plant and then lease back to the Montana Power Company. An investor's interest is for economic reasons solely and not to be regulated or to provide service. This bill will take out any form of regulation, but make the lessee subject to the jurisdiction of the Public Service Commission. The Public Service Commission is not comfortable with the substance of House Bill 852 and therefore will be supporting the bill with proposed amendments. Mr. Gannon explained that his proposed amendments are housekeeping items only.

Proponent Opal Winebrenner, representing the Public Service Commission, supplied written testimony which is attached hereto as Exhibit 8. The commission does support the bill provided their amendments are adopted.

Proponent Jim Paine, representing the Montana Consumer Council, stated House Bill 852 gives the Public Service Commission a needed option. When Colstrip 4 comes into

commercial operation, the problems faced Montana Power Company will be alleviated. If this bill is not passed, Montana Power Company will be faced with problems in negotiating a transaction. Investors are concerned with being treated as a utility and this gives the Public Service Commission this power and option, added Mr. Paine.

In closing, Representative Harp stressed to the committee they support the bill as introduced and not to accept any proposed amendments. The language is clear with a reasonable and fair bill being drafted.

Representative Driscoll asked Opal Winebrenner if the proposed amendments protect the lessee and their effect on the consumer. Ms. Winebrenner explained that the amendments protect the lessor at such time when the board changes and the consumer effect would depend on the leasing arrangements.

Representative Kadas asked Bob Gannon how a "leverage lease program" comes about. Mr. Gannon explained that the cost of Colstrip 4 is 300 billion dollars and through conventional financing Montana Power Company is required to use a 35 year amortization schedule, which creates the ability to lower the cost of the plant. The cost to Montana Power Company is 65 mils and to an investor is 40 mils. A high income entity will purchase from Montana Power Company at their cost, give or take 300 million.

Representative Kadas then asked Bob Gannon what information the Public Service Commission feels is missing. Mr. Gannon stated he does not believe they know exactly what is missing.

Representative Kadas directed the same question to Opal Winebrenner. She explained that the concern is for protection only.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 852 was closed.

HOUSE BILL 458: Hearing commenced on House Bill 458. Representative Ray Peck, District #15, sponsor of the bill, stated this allows a credit union or a savings and loan association to maintain a satellite terminal outside its main office at or near a branch office.

Proponent Jeff Kirkland, Vice President, Governmental Relations, Montana Credit Unions League, supplied written testimony which is attached hereto as Exhibit 9.

Opponent John Scully, representing the Montana Independent Bankers' Association, stated this presents a non-bank bank loophole. An automatic teller machine allows cash withdrawal

House Bill 852

Introduced Bill

1. Page 2, line 21.
Following: "plant"
Strike: ",property,"
2. Page 3, line 14.
Following: "commission"
Insert: ", or its successor,"
3. Page 3, line 16.
Following: "utility"
Strike: "leasing"
Insert: ", as lessee of"
4. Page 3, line 19.
Following: "section"
Insert: ",,"

PUBLIC SERVICE COMMISSION

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The Public Service Commission's Proposed Amendments to H.B. 852

Page 3, line 9.

Strike: "."

Insert: ", or unless evidence that was not presented at the original proceeding is later presented to the commission. Such evidence cannot be used as the basis for modification or revocation of the order unless it is shown that there were good reasons for failure to present it at the original proceeding, and that the evidence existed prior to issuance of the final order."

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 22, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich, on February 22, 1985 at 7:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

ACTION ON HOUSE BILL 855: Representative Kadas moved DO PASS on House Bill 855 and then moved the amendments which are attached hereto as Exhibit 1. The amendments DO PASS by a unanimous vote. House Bill 855 DO PASS AS AMENDED with 13 members voting yes and 6 members voting no.

ACTION ON HOUSE BILL 863: Representative Hansen made a motion that House Bill 863 DO PASS. Representative Thomas offered a substitute motion that House Bill 863 DO NOT PASS. Second was received and a roll call vote resulted in 10 members voting yes and 9 members voting no. House Bill 863 DO NOT PASS.

ACTION ON HOUSE BILL 840: Representative Brandewie moved DO PASS on House Bill 840. Representative Nisbet moved to amend on page 1, line 24, strike \$100 and insert \$250. Representative Brandewie seconded the motion to amend. Representative Kadas added this is a stiff penalty. Question being called, the amendment PASSED with Representatives Kadas, Simon, Jones, and Glaser voting no. House Bill 840 DO PASS AS AMENDED by unanimous vote.

ACTION ON HOUSE BILL 852: Representative Brandewie made a motion that House Bill 852 DO PASS. Representative Driscoll moved to amend as shown on the standing committee report which is attached hereto. The amendments DO PASS by unanimous vote. House Bill 852 DO PASS AS AMENDED unanimously.

ACTION ON HOUSE BILL 597: Representative Ellerd moved DO PASS on House Bill 597. Representative Schultz stated the lien laws need to be discussed. Representative Howe suggested Senate Bill 129 should be looked at. Representative Ellerd stated this system works in California, and that banks will look closer at who they are loaning money to. Question being called, a roll call vote resulted in 10 members voting yes and 10 members voting no. House

STANDING COMMITTEE REPORT

February 22

1935

page 1 of 1

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 852

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EXCLUDE CERTAIN PERSONS FROM DEFINITION OF PUBLIC UTILITY

Respectfully report as follows: That HOUSE Bill No. 852
BE AMENDED AS FOLLOWS:

- 1) Page 2, line 21
Following: "plant"
Strike: ", property,"
- 2) Page 3, line 14
Following: "commission"
Insert: ", or its successor,"
- 3) Page 3, line 18
Following: "utility"
Strike: "leasing"
Insert: ", as lessee of"
- 4) Page 3, line 19
Following: "section"
Insert: ", "

DO PASS
AS AMENDED

Rep. Robert Pavlovich Chairman.

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 14, 1985

The thirty-eighth meeting of the Business & Industry Committee met on March 14, 1985 at 10 a.m. in Room 410. The meeting was called to order by Chairman Mike Halligan.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 852: Representative John Harp, House District #7, Flathead, is the chief sponsor of this bill which provides for an exemption for certain persons from regulation as a public utility. It is basically a financing tool that will allow a utility to utilize an investment group to purchase interest in a utility, invest this and would eventually be leased back to the utility. The PSC would be involved in the definition of the person being exempted and make sure that any regulations as far as interstate activities would be governed by the PSC and any out of state activities would be governed by the FIRC. It would expedite the current problems Montana Power is having with Colstrip 4.

PROPONENTS: Bob Gannon, Vice-President and General Counsel for Montana Power, feels this bill is necessary because of Colstrip #4 which has power that will not be needed until the early 1990's. It had been anticipated that there would be a substantial load come on line at that time but since the closure of Ananconda's smelter and in Butte this power will no longer be necessary and there will be an excess that they feel could now be marketed to out of state utilities. Because of federal tax regulations relating to investment tax credits and accelerated depreciation they feel an outside investor with substantial income could take advantage of this situation and by doing so it would help to reduce the cost of mill power. Montana law currently has a very broad definition of investors and they could therefore become a public utility and because of this it has kept potential investors away. This bill would help clarify this situation. He noted that in a transaction such as this, that the person investing would still be subject to the rate regulations of the PSC or the federal regulatory commission.

Opal Winebrenner, Attorney with the PSC, stated they have been working with Montana Power on this bill and feel the exemption being proposed is what is necessary and supports the bill.

Jim Payne, from the Counsumer Council Office, also supports the bill. It would assure potential investors that they would not become regulated utilities and allow them to obtain financing while still keeping the PSC involved. They are in support of the measure.

OPPONENTS: There were none.

Questions were then called for from the committee members. Senator Weeding wondered if Montana Power was in a position to be able to

utilize this type of tax credit. Bob Gannon explained they were not able to do so because of their financial situation. Senator Gage wondered if they had checked out leasing the plant as opposed to leasing with an option to buy. He explained that the federal laws on leasing are very strict and Montana Power will be able to retain the option of being able to buy back the facilities in 25 years at a fair market value. Senator Boylan wondered if this would end up the same as a holding company. Bob Gannon felt it was not the same. Senator Christiaens wondered if it was an open end lease. Bob Gannon explained it is a lease with the ability to acquire the assets at the end of 25 years at a fair market value. Senator Williams wondered if this could possibly lower rates per kilowatt hour and was told it possibly could. Senator Thayer asked about the tax credit and was told it was a 15 year depreciation accelerated for 15 years on approximately \$300 million. The hearing was closed by Representative Harp on House Bill 852.

DISPOSITION OF HOUSE BILL 852: Senator Goodover MOVED THAT HOUSE BILL 852 BE CONCURRED IN. The motion carried. Senator Jacobson will carry the bill on the Senate floor.

CONSIDERATION OF HOUSE BILL 380 and 577: Representative Dorothy Bradley, House District #79 of Bozeman, is the chief sponsor of these two bills. She explained the Consumer Council, AT & T and Mountain Bell have all joined together to draft these measures. She gave a brief history of the telecommunications industry. She noted that a nationwide communications system has been created through a regulated monopoly so that one entity was guaranteed all of the business in return for government regulations and then a ceiling was put on the profits. Some twenty years ago there were some who felt they wanted to enter into the market also. A seven year antitrust suit followed and some new federal regulations were passed. This allowed AT & T out of their "fence" and allowed other kinds of competition to enter into the market. Mountain Bell is now a separate entity from A T & T. Montana is susceptible to the problems because of there being no requirement for a certificate of public convenience and necessity so a competitor can just move in. Montana is divided into two areas called LATTA and this just means that when a phone call crosses over this line that A T & T is entitled to that business and this is the reason you are billed separately when a call crosses that line. With the present situation anyone can come in and make a long distance trunk line and "skim off the cream" where there is a high volume. Mountain Bell feels they are at a disadvantage because they are required to serve all the local exchanges. These competitors can charge cheaper long distance rates and they still have their fixed costs and would be left dividing up the rates with fewer customers. The coops are in somewhat the same situation. House Bill 577 moves away from regulated monopolies and into more competitive markets. It would just give clarification of what is regulated and what is not. Private telecommunications are not regulated nor are resales. The bill would provide that before you can provide regulated service you have to file a notice with the PSC. Cross-subsidization would be prohibited and clarified in the bill. The PSC would be allowed to tariff or detariff rates. She noted that this is different than

STANDING COMMITTEE REPORT

MARCH 14

85

19.....

MR. PRESIDENT

We, your committee on..... **BUSINESS & INDUSTRY**

having had under consideration..... **HOUSE BILL** No. **852**

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**EXCLUDE CERTAIN PERSONS FROM DEFINITION OF PUBLIC UTILITY
(Jacobson)**

Respectfully report as follows: That..... **HOUSE BILL** No. **852**

BE CONCURRED IN

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.....
Mike Halligan

Chairman.